



House of Representatives

General Assembly

File No. 555

January Session, 2007

Substitute House Bill No. 7155

House of Representatives, April 23, 2007

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING A PROFESSIONAL ASSISTANCE PROGRAM FOR HEALTH CARE PROFESSIONALS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) As used in this section
2 and section 2 of this act:

3 (1) "Chemical dependency" means abusive or excessive use of
4 drugs, including alcohol, narcotics or chemicals, that results in
5 physical or psychological dependence;

6 (2) "Department" means the Department of Public Health;

7 (3) "Health care professionals" includes any person licensed or who
8 holds a permit pursuant to chapter 370, 372, 373, 375, 375a, 376, 376a,
9 376b, 376c, 377, 378, 379, 379a, 380, 381, 381a, 383, 383a, 383b, 383c, 384,
10 384a, 384b, 384c, 384d, 385, 398 or 399 of the general statutes;

11 (4) "Medical review committee" means any committee described in
12 section 19a-17b of the general statutes that reviews and monitors

13 participation by health care professionals in the assistance program;
14 and

15 (5) "Assistance program" means the program established pursuant
16 to subsection (b) of this section to provide education, prevention,
17 intervention, referral assistance, rehabilitation or support services to
18 health care professionals who have a chemical dependency, emotional
19 or behavioral disorder or physical or mental illness.

20 (b) State or local professional societies or membership organizations
21 of health care professionals or any combination thereof, may establish
22 a single assistance program to serve all health care professionals,
23 provided the assistance program (1) operates in compliance with the
24 provisions of this section, and (2) includes one or more medical review
25 committees that comply with the applicable provisions of subsections
26 (c) to (f), inclusive, of this section. The program shall (A) be an
27 alternative, voluntary and confidential opportunity for the
28 rehabilitation of health care professionals and persons who have
29 applied to become health care professionals, and (B) include
30 mandatory, periodic evaluations of each participant's ability to practice
31 with skill and safety and without posing a threat to the health and
32 safety of any person or patient in the health care setting.

33 (c) Prior to admitting a health care professional into the assistance
34 program, a medical review committee shall (1) determine if the health
35 care professional is an appropriate candidate for rehabilitation and
36 participation in the program, and (2) establish the participant's terms
37 and conditions for participating in the program. No action taken by the
38 medical review committee pursuant to this subsection shall be
39 construed as the practice of medicine or mental health care.

40 (d) A medical review committee shall not admit into the assistance
41 program any health care professional who has pending disciplinary
42 charges, prior history of disciplinary action or a consent order by any
43 professional licensing or disciplinary body or has been charged with or
44 convicted of a felony under the laws of this state, or of an offense that,
45 if committed within this state, would constitute a felony. A medical

46 review committee shall refer such health care professional to the
47 department and shall submit to the department all records and files
48 maintained by the assistance program concerning such health care
49 professional. Upon such referral, the department shall determine if the
50 health care professional is eligible to participate in the assistance
51 program and whether such participation should be treated as
52 confidential pursuant to subsection (h) of this section. The department
53 may seek the advice of professional health care societies or
54 organizations and the assistance program in determining what
55 intervention, referral assistance, rehabilitation or support services are
56 appropriate for such health care professional. If the department
57 determines that the health care professional is an appropriate
58 candidate for confidential participation in the assistance program, the
59 entire record of the referral and investigation of the health care
60 professional shall be confidential and shall not be disclosed, except at
61 the request of the health care professional, for the duration of the
62 health care professional's participation in and upon successful
63 completion of the program, provided such participation is in
64 accordance with terms agreed upon by the department, the health care
65 professional and the assistance program.

66 (e) Any health care professional participating in the assistance
67 program shall immediately notify the assistance program upon (1)
68 being made aware of the filing of any disciplinary charges or the
69 taking of any disciplinary action against such health care professional
70 by a professional licensing or disciplinary body, or (2) being charged
71 with or convicted of a felony under the laws of this state, or of an
72 offense that, if committed within this state, would constitute a felony.
73 The assistance program shall regularly review available sources to
74 determine if disciplinary charges have been filed, or disciplinary action
75 has been taken, or felony charges have been filed or substantiated
76 against any health care professional who has been admitted to the
77 assistance program. Upon such notification, the assistance program
78 shall refer such health care professional to the department and shall
79 submit to the department all records and files maintained by the
80 assistance program concerning such health care professional. Upon

81 such referral, the department shall determine if the health care
82 professional is eligible to continue participating in the assistance
83 program and whether such participation should be treated as
84 confidential in accordance with subsection (h) of this section. The
85 department may seek the advice of professional health care societies or
86 organizations and assistance program in determining what
87 intervention, referral assistance, rehabilitation or support services are
88 appropriate for such health care professional. If the department
89 determines that the health care professional is an appropriate
90 candidate for confidential participation in the assistance program, the
91 entire record of the referral and investigation of the health care
92 professional shall be confidential and shall not be disclosed, except at
93 the request of the health care professional, for the duration of the
94 health care professional's participation in and upon successful
95 completion of the program, provided such participation is in
96 accordance with terms agreed upon by the department, the health care
97 professional and the assistance program.

98 (f) A medical review committee shall not admit into the assistance
99 program any health care professional who is alleged to have harmed a
100 patient. Upon being made aware of such allegation of harm a medical
101 review committee and the assistance program shall refer such health
102 care professional to the department and shall submit to the department
103 all records and files maintained by the assistance program concerning
104 such health care professional. Such referral may include
105 recommendations as to what intervention, referral assistance,
106 rehabilitation or support services are appropriate for such health care
107 professional. Upon such referral, the department shall determine if the
108 health care professional is eligible to participate in the assistance
109 program and whether such participation should be provided in a
110 confidential manner in accordance with the provisions of subsection
111 (h) of this section. The department may seek the advice of professional
112 health care societies or organizations and the assistance program in
113 determining what intervention, referral assistance, rehabilitation or
114 support services are appropriate for such health care professional. If
115 the department determines that the health care professional is an

116 appropriate candidate for confidential participation in the assistance
117 program, the entire record of the referral and investigation of the
118 health care professional shall be confidential and shall not be
119 disclosed, except at the request of the health care professional, for the
120 duration of the health care professional's participation in and upon
121 successful completion of the program, provided such participation is
122 in accordance with terms agreed upon by the department, the health
123 care professional and the assistance program.

124 (g) The assistance program shall report annually to the appropriate
125 professional licensing board or commission or, in the absence of such
126 board or commission, to the Department of Public Health on the
127 number of health care professionals participating in the assistance
128 program who are under the jurisdiction of such board or commission
129 or in the absence of such board or commission, the department, the
130 purposes for participating in the assistance program and whether
131 participants are practicing health care with skill and safety and
132 without posing a threat to the health and safety of any person or
133 patient in the health care setting. Annually, on or before December
134 thirty-first, the assistance program shall report such information to the
135 joint standing committee of the General Assembly having cognizance
136 of matters relating to public health, in accordance with the provisions
137 of section 11-4a of the general statutes.

138 (h) (1) All information given or received in connection with any
139 intervention, rehabilitation, referral assistance or support services
140 provided by the assistance program pursuant to this section, including
141 the identity of any health care professional seeking or receiving such
142 intervention, rehabilitation, referral assistance or support services shall
143 be confidential and shall not be disclosed (A) to any third person or
144 entity, unless disclosure is reasonably necessary for the
145 accomplishment of the purposes of such intervention, rehabilitation,
146 referral assistance or support services or for the accomplishment of an
147 audit in accordance with subsection (l) of this section, or (B) in any
148 civil or criminal case or proceeding or in any legal or administrative
149 proceeding, unless the health care professional seeking or obtaining

150 intervention, rehabilitation, referral assistance or support services
151 waives the confidentiality privilege under this subsection or unless
152 disclosure is otherwise required by law. Unless a health care
153 professional waives the confidentiality privilege under this subsection
154 or disclosure is otherwise required by law, no person in any civil or
155 criminal case or proceeding or in any legal or administrative
156 proceeding may request or require any information given or received
157 in connection with the intervention, rehabilitation, referral assistance
158 or support services provided pursuant to this section.

159 (2) The proceedings of a medical review committee shall not be
160 subject to discovery or introduced into evidence in any civil action for
161 or against a health care professional arising out of matters that are
162 subject to evaluation and review by such committee, and no person
163 who was in attendance at such proceedings shall be permitted or
164 required to testify in any such civil action as to the content of such
165 proceedings. Nothing in this subdivision shall be construed to
166 preclude (A) in any civil action, the use of any writing recorded
167 independently of such proceedings; (B) in any civil action, the
168 testimony of any person concerning such person's knowledge,
169 acquired independently of such proceedings, about the facts that form
170 the basis for the instituting of such civil action; (C) in any civil action
171 arising out of allegations of patient harm caused by health care
172 services rendered by a health care professional who, at the time such
173 services were rendered, had been requested to refrain from practicing
174 or whose practice of medicine or health care was restricted, the
175 disclosure of such request to refrain from practicing or such restriction;
176 or (D) in any civil action against a health care professional, disclosure
177 of the fact that a health care professional participated in the assistance
178 program, the dates of participation, the reason for participation and
179 confirmation of successful completion of the program, provided a
180 court of competent jurisdiction has determined that good cause exists
181 for such disclosure after (i) notification to the health care professional
182 of the request for such disclosure, and (ii) a hearing concerning such
183 disclosure at the request of any party, and provided further, the court
184 imposes appropriate safeguards against unauthorized disclosure or

185 publication of such information.

186 (3) Nothing in this subsection shall be construed to prevent the
187 assistance program from disclosing information in connection with
188 administrative proceedings related to the imposition of disciplinary
189 action against any health care professional referred to the department
190 by the assistance program pursuant to subsection (d), (e), (f) or (i) of
191 this section or by the professional assistance oversight committee
192 pursuant to subsection (e) of section 2 of this act.

193 (i) If at any time, (1) the assistance program determines that a health
194 care professional is not able to practice with skill and safety or poses a
195 threat to the health and safety of any person or patient in the health
196 care setting and the health care professional does not refrain from
197 practicing health care or fails to participate in a recommended
198 program of rehabilitation, or (2) a health care professional who has
199 been referred to the assistance program fails to comply with terms or
200 conditions of the program or refuses to participate in the program, the
201 assistance program shall refer the health care professional to the
202 department and shall submit to the department all records and files
203 maintained by the assistance program concerning such health care
204 professional. Upon such referral, the department shall determine if the
205 health care professional is eligible to participate in the assistance
206 program and whether such participation should be provided in a
207 confidential manner in accordance with the provisions of subsection
208 (h) of this section. The department may seek the advice of professional
209 health care societies or organizations and the assistance program in
210 determining what intervention, rehabilitation, referral assistance or
211 support services are appropriate for such health care professional. If
212 the department determines that the health care professional is an
213 appropriate candidate for confidential participation in the assistance
214 program, the entire record of the referral and investigation of the
215 health care professional shall be confidential and shall not be
216 disclosed, except at the request of the health care professional, for the
217 duration of the health care professional's participation in and upon
218 successful completion of the program, provided such participation is

219 in accordance with terms agreed upon by the department, the health
220 care professional and the assistance program.

221 (j) (1) Any physician, hospital or state or local professional society or
222 organization of health care professionals that refers a physician for
223 intervention to the assistance program shall be deemed to have
224 satisfied the obligations imposed on the person or organization
225 pursuant to subsection (a) of section 20-13d of the general statutes,
226 with respect to a physician's inability to practice medicine with
227 reasonable skill or safety due to chemical dependency, emotional or
228 behavioral disorder or physical or mental illness.

229 (2) Any physician, physician assistant, hospital or state or local
230 professional society or organization of health care professionals that
231 refers a physician assistant for intervention to the assistance program
232 shall be deemed to have satisfied the obligations imposed on the
233 person or organization pursuant to subsection (a) of section 20-12e of
234 the general statutes, with respect to a physician assistant's inability to
235 practice with reasonable skill or safety due to chemical dependency,
236 emotional or behavioral disorder or physical or mental illness.

237 (k) The assistance program established pursuant to subsection (b) of
238 this section shall meet with the professional assistance oversight
239 committee established under section 2 of this act on a regular basis, but
240 not less than four times each year.

241 (l) On or before November 1, 2007, and annually thereafter, the
242 assistance program shall select a person determined to be qualified by
243 the assistance program and the department to conduct an audit on the
244 premises of the assistance program for the purpose of examining
245 quality control of the program and compliance with all requirements
246 of this section. On or after November 1, 2011, the department, with the
247 agreement of the professional assistance oversight committee
248 established under section 2 of this act, may waive the audit
249 requirement, in writing. Any audit conducted pursuant to this
250 subsection shall consist of a random sampling of at least twenty per
251 cent of the assistance program's files or ten files, whichever is greater.

252 Prior to conducting the audit, the auditor shall agree in writing (1) not
253 to copy any program files or records, (2) not to remove any program
254 files or records from the premises, (3) to destroy all personally
255 identifying information about health care professionals participating in
256 the assistance program upon the completion of the audit, (4) not to
257 disclose personally identifying information about health care
258 professionals participating in the program to any person or entity
259 other than a person employed by the assistance program who is
260 authorized by such program to receive such disclosure, and (5) not to
261 disclose in any audit report any personally identifying information
262 about health care professionals participating in the assistance program.
263 Upon completion of the audit, the auditor shall submit a written audit
264 report to the assistance program, the department, the professional
265 assistance oversight committee established under section 2 of this act
266 and the joint standing committee of the General Assembly having
267 cognizance of matters relating to public health, in accordance with the
268 provisions of section 11-4a of the general statutes.

269 Sec. 2. (NEW) (*Effective from passage*) (a) The Department of Public
270 Health shall establish a professional assistance oversight committee for
271 the assistance program. Such committee's duties shall include, but not
272 be limited to, overseeing quality assurance. The oversight committee
273 shall consist of the following members: (1) Three members selected by
274 the department, who are health care professionals with training and
275 experience in mental health or addiction services, (2) three members
276 selected by the assistance program, who are not employees, board or
277 committee members of the assistance program and who are health care
278 professionals with training and experience in mental health or
279 addiction services, and (3) one member selected by the Department of
280 Mental Health and Addiction Services who is a health care
281 professional.

282 (b) The assistance program shall provide administrative support to
283 the oversight committee.

284 (c) Beginning January 1, 2008, the oversight committee shall meet

285 with the assistance program on a regular basis, but not fewer than four
286 times each year.

287 (d) The oversight committee may request and shall be entitled to
288 receive copies of files or such other assistance program records it
289 deems necessary, provided all information pertaining to the identity of
290 any health care professional shall first be redacted by the assistance
291 program. No member of the oversight committee may copy, retain or
292 maintain any such redacted records. If the oversight committee
293 determines that a health care professional is not able to practice with
294 skill and safety or poses a threat to the health and safety of any person
295 or patient in the health care setting, and the health care professional
296 has not refrained from practicing health care or has failed to comply
297 with terms or conditions of participation in the assistance program, the
298 oversight committee shall notify the assistance program to refer the
299 health care professional to the department. Upon such notification, the
300 assistance program shall refer the health care professional to the
301 department, in accordance with the provisions of subsection (i) of
302 section 1 of this act.

303 (e) (1) If, at any time, the oversight committee determines that the
304 assistance program (A) has not acted in accordance with the provisions
305 of this section or section 1 of this act, or (B) requires remedial action
306 based upon the audit performed under subsection (l) of section 1 of
307 this act, the oversight committee shall notify the assistance program of
308 such determination, in writing, not later than thirty days after such
309 determination.

310 (2) The assistance program shall develop and submit to the
311 oversight committee a corrective action plan addressing such
312 determination not later than thirty days after the date of such
313 notification. The assistance program may seek the advice and
314 assistance of the oversight committee in developing the corrective
315 action plan. Upon approval of the corrective action plan by the
316 oversight committee, the oversight committee shall provide a copy of
317 the approved plan to the assistance program and the department.

318 (3) If the assistance program fails to comply with the corrective
319 action plan, the oversight committee may amend the plan or direct the
320 assistance program to refer some or all of the records of the health care
321 professionals in the assistance program to the department. Upon such
322 referral, the department shall determine if each referred health care
323 professional is eligible for continued intervention, rehabilitation,
324 referral assistance or support services and whether participation in
325 such intervention, rehabilitation, referral assistance or support services
326 should be treated as confidential in accordance with subsection (h) of
327 section 1 of this act. If the department determines that a health care
328 professional is an appropriate candidate for confidential participation
329 in the assistance program, the entire record of the referral and
330 investigation of the health care professional shall be confidential and
331 shall not be disclosed, except at the request of the health care
332 professional, for the duration of the health care professional's
333 participation in and upon successful completion of the program,
334 provided such participation is in accordance with terms agreed upon
335 by the department, the health care professional and the assistance
336 program.

337 (f) Records created for, by or on behalf of the oversight committee
338 shall not be deemed public records and shall not be subject to the
339 provisions of section 1-210 of the general statutes. Such records shall be
340 treated as confidential in accordance with the provisions of subsection
341 (h) of section 1 of this act.

342 (g) The proceedings of the oversight committee shall not be subject
343 to discovery or introduced into evidence in any civil action for or
344 against a health care professional arising out of matters that are subject
345 to evaluation and review by such committee, and no person who was
346 in attendance at such proceedings shall be permitted or required to
347 testify in any such civil action as to the content of such proceedings.
348 Nothing in this subdivision shall be construed to preclude (1) in any
349 civil action, the use of any writing recorded independently of such
350 proceedings; (2) in any civil action, the testimony of any person
351 concerning such person's knowledge, acquired independently of such

352 proceedings, about the facts that form the basis for the instituting of
 353 such civil action; (3) in any civil action arising out of allegations of
 354 patient harm caused by health care services rendered by a health care
 355 professional who, at the time such services were rendered, had been
 356 requested to refrain from practicing or whose practice of medicine or
 357 health care was restricted, the disclosure of such request to refrain
 358 from practicing or such restriction; or (4) in any civil action against a
 359 health care professional, disclosure of the fact that a health care
 360 professional participated in the assistance program, the dates of
 361 participation, the reason for participation and confirmation of
 362 successful completion of the program, provided a court of competent
 363 jurisdiction has determined that good cause exists for such disclosure
 364 after (A) notification to the health care professional of the request for
 365 such disclosure, and (B) a hearing concerning such disclosure at the
 366 request of any party, and provided further, the court imposes
 367 appropriate safeguards against unauthorized disclosure or publication
 368 of such information.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section

PH *Joint Favorable Subst. C/R*

JUD

JUD *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

It is anticipated that the Department of Public Health will be able to accommodate provisions in the bill without requiring additional resources.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 7155*****AN ACT CONCERNING A PROFESSIONAL ASSISTANCE PROGRAM FOR HEALTH CARE PROFESSIONALS.*****SUMMARY:**

This bill allows state or local health care professional societies and organizations to establish a single assistance program to serve all health care professionals. The assistance program must have one or more medical review committees. A “medical review committee” is a committee that reviews and monitors participation by health care professionals in the assistance program.

The assistance program is an alternative, voluntary, and confidential program for the rehabilitation of health care professionals. It must provide a variety of educational, rehabilitative, and supportive services to health care professionals with a chemical dependency, emotional or behavioral disorder, or physical or mental illness. It must include mandatory, periodic evaluations of each participant’s ability to practice with skill and safety and without posing a threat to the health and safety of any person or patient in the health care setting.

The program must annually report certain information to the Department of Public Health (DPH), licensing boards, and the Public Health Committee.

The program is available to the following: physicians and surgeons, physician assistants, chiropractors, naturopaths, homeopathic physicians, podiatrists, athletic trainers, physical therapists, occupational therapists, alcohol and drug counselors, radiographers and radiologic technologists, nurse-midwives, nurses, dentists, dental hygienists, optometrists, opticians, respiratory care

practitioners, psychologists, marital and family therapists, clinical social workers, professional counselors, veterinarians, massage therapists, dietitian-nutritionists, acupuncturists, paramedics, hearing instrument specialists, speech pathologists and audiologists, and embalmers and funeral directors.

A medical review committee must determine a person's appropriateness for the program before admittance. The bill specifies various confidentiality provisions concerning the program and participation by health care professionals.

DPH must establish an oversight committee to monitor program quality. The oversight committee must meet with the assistance program on a regular basis; the program must also undergo an annual audit.

EFFECTIVE DATE: Upon passage

ESTABLISHING THE PROFESSIONAL ASSISTANCE PROGRAM

The bill authorizes state or local professional societies or membership organizations of health care professionals to establish a single health care professional assistance program to provide education, prevention, intervention, referral assistance, and support services to any health care professional (and anyone who has applied to be one) with a chemical dependency, emotional or behavioral disorder, or physical or mental illness. "Chemical dependency" means abusive or excessive use of drugs, including alcohol, narcotics, or chemicals, that result in physical or psychological dependence.

The program must establish at least one medical review committee. The program and medical review committee must comply with the bill.

The program must (1) be an alternative, voluntary, and confidential opportunity for the rehabilitation of health care professionals and licensure applicants and (2) include mandatory, periodic evaluations of each participant's ability to practice with skill and safety, and without

threat to the health and safety of any person or patient in the health care setting.

Before admitting any health care professional into the program, a medical review committee must (1) determine if the professional is an appropriate candidate for rehabilitation and participation and (2) establish terms and conditions of participation. The bill specifies that a committee's actions must not be construed as practicing medicine or mental health care.

HEALTH CARE PROFESSIONAL'S DISCIPLINARY AND CRIMINAL HISTORY AND PROGRAM PARTICIPATION

The bill prohibits a medical review committee from referring to the assistance program any health care professional who (1) has pending disciplinary charges against him or her, a prior history of disciplinary action, or a consent order by a professional licensing body or (2) has been charged with or convicted of a felony under Connecticut law or an offense that, if committed in Connecticut, would be a felony.

In such cases, the committee must refer the person to the Department of Public Health (DPH) and provide the department with all records and files maintained by the assistance program on the individual. Upon the referral, DPH must determine if the person is eligible for the assistance program and whether participation should be confidential (see below). DPH can seek advice from professional health care societies and organizations and the assistance program to determine what referral assistance, rehabilitation program, or support services are appropriate.

The bill requires a health care professional participating in the assistance program to immediately notify the program when (1) made aware of the filing of any disciplinary charges or any disciplinary action against him or her by a professional licensing or disciplinary body or (2) charged with or convicted of a felony under Connecticut law or an offense that would be a felony if committed in Connecticut.

The assistance program must regularly review available sources to

determine if disciplinary charges have been filed or taken against the individual, or felony charges have been filed or substantiated against a professional admitted into the program. After notification, the program must refer the professional to DPH and provide the department with all records and files the program maintains on the person. DPH must then determine if the individual is eligible to continue participating in the program and whether participation should be treated as confidential. DPH can seek advice from professional societies and organizations on appropriate services and interventions.

If DPH determines that the health professional is an appropriate candidate for confidential participation in the assistance program, the entire record of the person's referral and investigation is confidential and cannot be disclosed, except if requested by the health care professional, for the duration of the professional's participation in and successful completion of the program. Participation must be according to the terms agreed to by DPH, the program, and the individual.

FAILURE TO PARTICIPATE IN A PROGRAM

Under the bill, if (1) the assistance program determines that a professional cannot practice with skill and safety or poses a threat to the health and safety of any person or patient and the professional does not stop practicing or fails to participate in a recommended program or (2) a health care professional referred to the program fails or refuses to participate, the assistance program must refer that professional to DPH and submit to the department all related program records and files.

Upon such a referral, DPH must determine if the person is eligible to participate in the program and whether participation should be confidential. As discussed above, DPH can seek the advice of professional societies or organizations and the assistance program to determine the services appropriate for the individual. The same confidentiality provisions apply.

HARMING A PATIENT

The bill prohibits a medical review committee from referring to the assistance program a health care professional who is alleged to have harmed a patient. After being made aware of such an allegation, the committee and the assistance program must refer the professional to DPH along with all maintained records and files. The referral may include recommendations for appropriate services, referrals, and interventions. DPH must then determine if the person is eligible for such assistance and if so, whether they should be provided confidentially. Again, DPH can seek outside advice. If DPH determines that the person is an appropriate candidate for confidential participation in the program, the confidentiality provisions discussed above apply.

REPORTS TO DPH AND LICENSING BOARDS

The bill requires the assistance program to report on the program annually to the appropriate professional licensing board or commission, or to DPH (Not every health care profession has a separate licensing board or commission; in some cases DPH is the licensing authority.) The report must include the number of health care professionals participating in the program, the purpose for participating, and whether participants are practicing health care with skill and safety and without posing a threat to the health and safety of any person or patient. By December 31 annually, the program must also report this information to the Public Health Committee.

CONFIDENTIALITY PROVISIONS

Under the bill, all information given or received about an intervention, rehabilitation, referral assistance, or support services provided, including a health care professional's identity, is confidential. The information cannot be disclosed to a third party or entity unless disclosure is reasonably necessary to (1) accomplish the purposes of the intervention, rehabilitation, referral assistance, or support services or (2) to accomplish an audit (see below). It cannot be requested or disclosed in any civil, criminal, legal, or administrative proceeding, unless the health care professional waives the privilege or disclosure is otherwise required by law.

Under the bill, medical review committee proceedings are not subject to discovery and cannot be introduced as evidence in any civil action for or against a health care professional arising out of matters subject to evaluation and review by the committee. A person who attends such proceedings cannot be allowed or required to testify in any civil action about the content of the proceedings.

On the other hand, the bill specifies that it should not be construed as precluding in any civil action:

1. use of any writing recorded independently of such proceedings;
2. anyone's testimony about his or her knowledge, acquired independently of the proceedings, of the facts that are the basis of the civil action;
3. arising out of allegations of patient harm caused by the professional who, at the time of providing services, had been requested to refrain from practicing or whose practice was restricted, disclosure of such request or restriction; or
4. against a professional, disclosure of the fact that the individual participated in the assistance program, dates of participation, reason for participation, and confirmation of successful completion.

The court must determine that good cause exists for the disclosure after (a) notifying the professional of the disclosure request; (b) a hearing is held concerning the disclosure, at the request of any party; and (c) the court imposes appropriate safeguards against unauthorized disclosure or publication of the information.

The bill specifies that it should not be construed to prevent the assistance program from disclosing information about administrative proceedings related to disciplinary action taken against a professional who the assistance program or oversight committee referred to DPH.

REQUIRED REPORTING

Current law requires physicians, hospitals, and medical societies to report an impaired physician or physician assistant to DPH within 30 days of knowing of the impairment (CGS §§ 20-12e & 20-13d). Impairment means that the physician is or may be unable to practice medicine with reasonable skill or safety because of:

1. physical illness or loss or motor skill;
2. emotional disorder or mental illness;
3. drug abuse;
4. illegal, incompetent, or negligent conduct in the practice of medicine;
5. possession, use, or distribution of controlled substances or legend drugs (except for therapeutic purposes); or
6. misrepresentation or concealment of a material fact in obtaining or reinstating a medical license.

Under the bill, any physician, physician assistant, hospital, or state or local professional society of health care professionals that refers a physician or physician assistant for intervention to the assistance program is deemed to have satisfied the obligations of the existing law described above.

AUDITS

By November 1, 2007 and annually afterwards, the assistance program must select an individual the program and DPH determine qualified to audit the assistance program. The audit's purpose is to examine the program's quality control and compliance with the. By November 1, 2011, DPH, with the agreement of the professional assistance oversight committee (see below), may waive the audit requirement in writing.

An audit must be a random sampling of the greater of at least 20% of the assistance program's files or 10 files. Before auditing, the auditor

must agree in writing not to (1) copy any program files or records; (2) remove any program files or records from the premises; (3) disclose personally identifying information about professionals in the program to anyone other than a person or entity employed by the program and authorized to receive disclosure; and (4) disclose in any audit report any personally identifying information about professionals participating.

The auditor must also agree to destroy all personally identifying information about health care professionals participating in assistance programs after the audit is complete.

After completing the audit, the auditor must submit a written audit report to the assistance program, the oversight committee, and the Public Health Committee.

PROFESSIONAL ASSISTANCE OVERSIGHT COMMITTEE

Members and Responsibilities

The bill requires DPH to establish a seven-member professional assistance oversight committee to oversee the program's quality assurance. The committee must include the following: (1) three members selected by DPH, who are health care professionals with training and experience in mental health or addiction services; (2) three members selected by the assistance program, who are not employees, board, or committee members of the assistance program and who are health care professionals with training and experience in mental health or addiction services; and (3) one member selected by the Department of Mental Health and Addiction Services, who is a health care professional. The bill requires the assistance program to provide administrative support to the committee.

Beginning January 1, 2008, the oversight committee must meet with the assistance program at least four times a year.

Under the bill, the committee may request and is entitled to receive copies of files or other assistance program records it deems necessary, provided the program redacts all information about the identity of any

professional. Oversight committee members cannot copy, retain, or maintain any redacted records. If the committee determines that a professional is unable to practice with skill and safety or poses a threat to the health and safety of any person or patient, and the professional has not stopped practicing or has failed to comply with the terms and conditions of participation in the assistance program, the oversight committee must notify the assistance program to refer the person to DPH. Upon notification, the assistance program must refer the professional to DPH, according to the procedures specified above.

***Failure of the Assistance Program to Act According to Law;
Corrective Action Plan***

The bill requires the oversight committee to notify the assistance program within 30 days of a determination that the assistance program (1) has not acted according to law or (2) requires remedial action based on the audit. The assistance program must develop a corrective action plan within 30 days of the notification. If the assistance program fails to comply with the corrective action plan, the oversight committee can amend it or direct the program to refer some or all of the records of persons in the program to DPH. DPH must then determine if each referred person is eligible for continued services and whether such participation should be treated as confidential.

Confidentiality of Committee Records

Under the bill, oversight committee records are not public records and not subject to the Freedom of Information Act. They must be treated as confidential. Oversight committee proceedings are not subject to discovery or introduction into evidence in any civil action for or against a health care professional arising out of matters subject to evaluation and review by the committee. No person in attendance at committee proceedings is allowed or required to testify in any civil action about the proceedings. The bill allows the same disclosures and uses of information in civil actions as described above in the "Confidentiality" section.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute Change of Reference

Yea 27 Nay 0 (03/26/2007)

Judiciary Committee

Joint Favorable

Yea 43 Nay 0 (04/10/2007)